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STRUCTURED ASSET MORTGAGE INVESTMENTS II TRUST 2007-AR3
MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-AR3

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA - FRESNO DIVISION

In re

WILLIAM ANTHONY CURRY,
Debtor(s).

Case No. 10-61974-A

Chapter 13

D.C. No. PD-1

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND CO-DEBTOR
STAY
(11 U.S.C. §§ 362 and 1301 and Bankruptcy
Rule 4001)

CITIBANK, N.A., AS TRUSTEE FOR THE
CERTIFICATEHOLDERS OF
STRUCTURED ASSET
MORTGAGE INVESTMENTS II TRUST
2007-AR3 MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2007-AR3,

LBR 4001-1 and 9014-1(f)(1)

DATE: May 10, 2011
TIME: 1:30 p.m.
CTRM: 11

Movant,

2500 Tulare Street,
Fresno, CA 93721-1318

vs.

WILLIAM ANTHONY CURRY, Debtor(s);
and MICHAEL H. MEYER, Chapter 13
Trustee,

Respondents.

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1 TO THE RESPONDENTS NAMED ABOVE:

2 CITIBANK, N.A., AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF
3 STRUCTURED ASSET MORTGAGE INVESTMENTS II TRUST 2007-AR3 MORTGAGE
4 PASS-THROUGH CERTIFICATES, SERIES 2007-AR3¹ ("Movant"), respectfully represents as
5 follows:

6 RELIEF FROM STAY - CAUSE - BAD FAITH

7 1. This court has jurisdiction over the subject matter of this Motion pursuant to the
8 provisions of 28 United States Code §§ 157, 1334, and 11 United States Code § 362.

9 2. On or about October 15, 2010, William Anthony Curry ("Debtor") filed a
10 voluntary petition under Chapter 13 of the Bankruptcy Code. Michael H. Meyer is the appointed
11 Chapter 13 Trustee.

12 3. On or about December 21, 2006, Armando Barca and Reyna Rogers (collectively
13 the "Borrowers"), for valuable consideration, made, executed and delivered to Family Lending
14 Services, Inc. ("Lender") a Note in the principal sum of 531,400.00 (the "Note"). Pursuant to the
15 Note, Borrowers are obligated to make monthly principal and interest payments commencing
16 February 1, 2007, and continuing until January 1, 2037, when all outstanding amounts are due
17 and payable. A copy of the Note is attached to the concurrently served and filed Exhibits to the
18 Declaration in Support of Motion for Relief From Automatic Stay and Co-Debtor Stay
19 ("Exhibits") as exhibit A.

20 4. On or about December 21, 2006, Borrowers made, executed and delivered to
21 Lender a Deed of Trust (the "Deed of Trust") granting Lender a security interest in the certain
22 real property located at 6421 Seavey Court, Highland, California 92346 (hereinafter "Real
23 Property"), which is more fully described in the Deed of Trust. The Deed of Trust provides that
24 attorneys' fees and costs incurred as a result of the Debtor's bankruptcy case may be included in
25 the outstanding balance under the Note. The Deed of Trust was recorded on December 26, 2006,
26

27 ¹ This Motion for Relief from Automatic Stay shall not constitute a waiver of the within party's right to
28 receive service pursuant to Fed. R. Civ. P. 4, made applicable to this proceeding by Fed. R. Bankr. P. 7004,
notwithstanding Pite Duncan, LLP's participation in this proceeding. Moreover, the within party does not authorize
Pite Duncan, LLP, either expressly or impliedly through Pite Duncan, LLP's participation in this proceeding, to act
as its agent for purposes of service under Fed. R. Bankr. P. 7004.

1 in the Official Records of San Bernardino County, State of California. A copy of the Deed of
2 Trust is attached to the Exhibits as exhibit B.

3 5. Subsequently, Lender's beneficial interest in the Deed of Trust was assigned and
4 transferred to Movant. A copy of the Corporation Assignment of Deed of Trust evidencing the
5 Assignment of the Deed of Trust to Movant is attached to the Exhibits as exhibit C.

6 6. On or about July 24, 2009, less than six days before July scheduled trustee's sale
7 of the subject property, an unauthorized Quitclaim Deed was recorded in the San Bernardino
8 County Recorder's Office whereby Armando Barca and Reyna Rogers purported to transfer
9 interest in the Real Property to Debtor, in part, as a member of the Lucy Anaya, Richard Anaya,
10 Valerie Curry, William Curry, Claudia Guzman, and Alfonso Guzman trust, for no
11 consideration. A copy of the above-referenced Quitclaim Deed is attached to the Exhibits as
12 exhibit D.

13 7. A debtor's lack of good faith in filing a bankruptcy petition has often been used as
14 cause for relief from automatic stay. (In re Arnold (9th Cir. 1986) 806 F.2d 937, 939.) If it is
15 obvious that a debtor is attempting unreasonably to deter and harass creditors in their bona fide
16 efforts to realize upon their securities, good faith does not exist. (In re Arnold, supra, citing In re
17 Thirteenth Place, Inc. (Bankr.App.9th Cir. 1983) 30 B.R. 503, 505.) In the absence of
18 extraordinary circumstances, successive or serial filings for the purpose of reimposing the
19 automatic stay, particularly when the debtor's purpose is to delay a scheduled foreclosure, should
20 not be viewed with favor by the court. (In re McKissey (Bankr. N.D. IL 1989) 103 B.R. 189, 192
21 citing In re Russo (Bankr. N.D. IL 1988) 94 B.R. 127, 129.)

22 8. Once the lack of good faith is raised, the debtor has the burden of establishing that
23 the petition was filed in good faith. (Stage I Land Co. v. U.S. Department of H.U.D. (D. MN
24 1986) 71 B.R. 225, 229; In re Business Information Co., Inc. (Bankr. W.D. PA. 1988) 81 B.R.
25 382, 385.) Movant submits Debtor cannot meet this burden.

26 9. By reason of the foregoing, Movant is entitled to relief from stay and co-debtor
27 stay under 11 United States Code §§ 362 and 1301(d)(4). Movant also requests the court to
28 exercise its powers under § 105(a) of the Bankruptcy Code to grant Movant relief with in rem
relief for a period of 180 days pursuant to §§ 105 and 109(g) of the Bankruptcy Code in order to

1 prevent Debtor from further unjustly delaying Movant from exercising its rights under state law.
2 (In re Fernandez, 212 B.R. 361 (Bkrtcy C.D. CA 1997).

3 RELIEF FROM STAY - CAUSE

4 FAILURE TO MAKE POST-PETITION PAYMENTS

5 10. The Debtor is in default of his obligations under the Note for failure to make
6 payments as of June 1, 2008. As of March 2, 2011, the total amount owing under the Note is the
7 approximate sum of \$709,749.30, representing the principal balance of \$553,646.88, interest in
8 the sum of \$113,838.27, late charges in the amount of \$1,505.60, escrow advances in the amount
9 of \$34,084.75, and a recoverable balance of \$6,673.80. Further, Movant has incurred additional
10 post-petition attorneys' fees and costs in bringing the instant Motion. This is an approximate
11 amount for purposes of this Motion only, and should not be relied upon as such to pay off the
12 subject loan as interest and additional advances may come due subsequent to the filing of the
13 Motion. An exact payoff amount can be obtained by contacting Movant's counsel.

14 11. As a result of the default under the Note, a Notice of Default was recorded on
15 June 21, 2010.

16 12. Pursuant to 11 United States Code § 1322, and the Debtor's Chapter 13 Plan, the
17 Debtor is obligated to make all post-petition payments owing on the Note directly to Movant.
18 However, Movant has not received the post-petition payments owing for November 1, 2010
19 through March 1, 2011. Accordingly, the post-petition arrears owing under the Note are in the
20 approximate sum of \$13,213.90, consisting of five (5) payments in the amount of \$2,642.78
21 each, excluding the post-petition attorneys' fees and costs incurred in filing the instant Motion. A
22 copy of the post-petition payment accounting pursuant to Local Rule 4001-1(b)(7) is attached to
23 the Exhibits as exhibit E.

24 13. Movant maintains that neither the Note and Deed of Trust, or applicable non-
25 bankruptcy law, require Movant to provide a statement, payment coupon, invoice or other
26 comparable document to the Debtor.

27 14. A debtor's failure to make post-petition mortgage payments as they become due in
28 a Chapter 13 case constitutes "cause" for relief from the automatic stay and co-debtor stay
pursuant to 11 United States Code §§ 362 and 1301(d)(1). (In re Ellis (9th Cir. 1985) 60 B.R.

1 432.) Accordingly, as the Debtor has failed to make post-petition payments under the Note,
2 Movant is entitled to relief from the automatic stay and co-debtor stay pursuant to 11 United
3 States Code §§ 362 and 1301(d)(1).

4 RELIEF FROM STAY - CAUSE

5 ADEQUATE PROTECTION

6 15. Pursuant to the provisions of 11 United States Code §§ 361 and 362(d), Movant is
7 entitled to adequate protection of its interest in the Real Property.

8 16. Movant submits the adequate protection in this case requires normal and periodic
9 cash payments, as called for by the Note, plus the repayment of any and all delinquent amounts
10 owed to Movant, including all attorneys' fees and costs incurred in the filing of this motion.

11 17. Movant is informed and believes that Debtor is presently unwilling or unable to
12 provide adequate protection to the Movant and there is no probability that adequate protection
13 can be afforded to Movant within a reasonable time.

14 18. By reason of the foregoing, Movant is entitled to relief from stay and co-debtor
15 stay under 11 United States Code §§ 362 and 1301(d)(1), based upon the failure of Debtor to
16 provide adequate protection to Movant and to make payments as required by 11 United States
17 Code § 1322.

18 WHEREFORE, Movant respectfully prays for an Order of this court as follows:

19 1. Terminating the automatic stay and co-debtor stay of 11 United States Code §§
20 362 and 1301, as it applies to the enforcement by Movant of all of its rights in the Real Property
21 under the Note and the Deed of Trust;

22 2. That the Order be binding and effective in any other case under the Bankruptcy
23 Code purporting to affect the subject real property filed not later than two years after the date of
24 entry, upon recording a copy of the order or giving appropriate notice of its entry in compliance
25 with applicable non-bankruptcy law, except that a debtor in subsequent case may move for relief
26 from the order based upon good cause shown after notice and hearing.

27 3. Providing that the Order is binding as to the Debtors for a period of 180 days
28 following entry of the Order in any pending and/or subsequently filed bankruptcy case(s);

4. That the 14-day stay described by Bankruptcy Rule 4001(a)(3) be waived;

1 5. The Order Terminating Stay and Co-Debtor Stay of 11 United States Code §§ 362
2 and 1301 shall be binding and effective and supersede any subsequently entered confirmation
3 order that confirms a Chapter 13 Plan of Reorganization providing for the treatment of Movant's
4 claim.

5 6. Granting Movant leave to foreclose on the Real Property and to enforce the
6 security interest under the Note and the Deed of Trust, including any action necessary to obtain
7 possession of the Real Property;

8 7. Permitting Movant to offer and provide Debtor with information re: a potential
9 Forbearance Agreement, Loan Modification, Refinance Agreement, or other Loan Workout/Loss
10 Mitigation Agreement, and to enter into such agreement with Debtor;

11 8. Alternatively, in the event this court declines to grant Movant the relief requested
12 above, Movant requests that an Order for adequate protection be issued, requiring the Debtor to
13 reinstate and maintain in a current condition all obligations due under the Note and Deed of Trust
14 and all other deeds of trust encumbering the Real Property, including Debtor's obligations to pay
15 when due (a) the monthly installments of principal and interest, as required under the Note;
16 (b) tax/insurance obligations; and (c) any sums advanced by Movant on behalf of Debtor in order
17 to protect Movant's interest in the Real Property, including all attorneys' fees and costs incurred
18 in the filing of this motion;

19 9. That the attorneys' fees and costs incurred by Movant for filing the instant Motion
20 be included in the outstanding balance of the Note as allowed under applicable non-bankruptcy
21 law; and

22 10. For such other and further relief as the court deems just and proper.

23 Dated: April 8, 2011

PITE DUNCAN, LLP

/s/ ERIN L. LANEY (CA SBN 259863)

ERIN L. LANEY

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